



Bundesverwaltungsgericht



**Seminar organized by the Federal Administrative Court of  
Germany and ACA-Europe**

**Functions of and Access to Supreme Administrative  
Courts**

Berlin, 13 May 2019

**Answers to questionnaire: United Kingdom**



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**UK Supreme Court response to ACA-Europe Seminar Questionnaire – “Functions of and Access to Supreme Administrative Courts”, Berlin, 12-14 May 2019**

**I. Functions of the Supreme Administrative Court (SAC)**

1.

a) There are 3 to 4 instances in the administrative jurisdiction of England and Wales. A case begun in the First-tier Tribunal can be appealed to the Upper Tribunal, then the Court of Appeal, and then the Supreme Court. A case begun in the Administrative Court (part of the High Court) can be appealed to the Court of Appeal and then the Supreme Court. Exceptionally, there is a leap-frog procedure from a court of first instance (which will hand down an initial judgment) straight to the UK Supreme Court. The UK does not have a separate Supreme Administrative Court / Council of State.

b) No, the Supreme Court does not serve as a first instance court. However, there is a procedure for referring Bills passed by the devolved legislatures into Scotland, Wales and Northern Ireland direct to the Supreme Court for abstract review of whether they are within legislative competence before they receive Royal Assent.

c) Not applicable.

d) Not applicable.

2.

a) Supreme Court judges deal with full appeals and permission to appeal applications. In the financial year 2017/18, the 12 UK Supreme Court judges disposed of 199 permission to appeal applications and heard 85 final appeals.

(Note that the Justices of the UK Supreme Court also all sit as judges of the Judicial Committee of the Privy Council, which is the court of final appeal for a number of Commonwealth jurisdictions, particularly from the Caribbean, and British Overseas Territories and Crown Dependencies. This forms a substantial part of the workload of the Justices and support staff (including judicial assistants). The approximate division of work is 65% Supreme Court: 35% Privy Council work.)

b) Full appeals are more complex and take more time than permission to appeal applications. Every case is different, so it is not possible to estimate the amount of time required for each type of decision.

3. The Supreme Court reviews decisions of the lower courts only with a view to the law, but always in concrete cases. It does not answer abstract questions, except on the (rare) references mentioned at 1(b) above.

4. The purposes of the Supreme Court include achieving consistency in the interpretation and development of United Kingdom law across the three jurisdictions it serves (Scotland, Wales and Northern Ireland) and the further development of the law. Its purpose is not generally to correct errors in the application of settled law by the courts below.

5. Not applicable.

6.

a) No, there is no separate constitutional court.

b) The Supreme Court serves as a constitutional court in so far as it decides constitutional questions.

c) The Supreme Court considers constitutional law and fundamental rights in every case in which such issues arise.

d) Not applicable.

e) Not applicable.

f) Not applicable.

## **II. Access to the SAC**

1.

a) No, a party can appear as a litigant in person, but this is extremely rare in the Supreme Court.

b) If represented, the representative must be a barrister or a solicitor advocate with rights of audience in the higher courts.

c) No, there are no solicitors or barristers specially authorized to act before the Supreme Court.

d) No other legal professionals are admitted as representatives.

e) No, there are no specific (different) rules for representatives of administrative authorities. They are almost always represented by barristers (or solicitors) in independent practice.

2.

a) An application for permission to appeal to the Supreme Court must first be made to the court below. If that court refuses, an application to the Supreme Court can be made within 28 days. The test applied by both courts is whether the appeal raises an arguable point of law of general public importance which ought to be considered by the Supreme Court at this time.

b) The Supreme Court is not limited to reviewing a case according to the specific objections of the appellant. But if it raises a new point of its own motion it will give the parties notice of this.

c) Not applicable.

3.

a) Any unsuccessful party in proceedings below can seek to appeal to the Supreme Court. A successful party can also seek to uphold the decision of the court below on different grounds.

b) The Supreme Court cannot hear cases in which the Appeal Courts have refused permission to appeal.

4.

a) Yes. The right to an appeal is restricted by a legally established filter: permission to appeal is required and only granted if the case raises an arguable point of law of general public importance. Value is not relevant.

b) Either the lower court (usually the Court of Appeal) or the Supreme Court decides, but in the great majority of cases, the Appeal Court refuses permission and leaves the decision to the Supreme Court. If the Court of Appeal gives permission to appeal to the Supreme Court, this decision is binding on the Supreme Court. If the Supreme Court decides, a panel of three Supreme Court Justices will consider the application, usually on the papers, but there can be an oral hearing. If the Court of Appeal refuses permission, the Supreme Court can still grant permission. Both the Court of Appeal and the Supreme Court can only grant permission on application.

c) In criminal cases, including extradition, there can only be an appeal if the lower court has certified that the case raises a point of law of general public importance. Permission to appeal is still required.

d) The general requirements under which a case can be admitted to the Supreme Court is that it raises an arguable point of law of general public importance that the Supreme Court ought to consider at that time.

e) It is possible to appeal against certain decisions of the court of first instance to the Supreme Court directly. This is known as the 'leap-frog' procedure. First, a certificate must be obtained from the court of first instance, if the relevant statutory conditions are fulfilled. The relevant conditions are set out in section 12(3) and (3A) of the Administration of Justice Act 1969, section 14A(4) and(5) of the Tribunals, Courts and Enforcement Act 2007, section 37A(4) and (5) of the Employment Tribunals Act 1996 and section 7B(4) and (5) of the Special Immigration Commission Act 1997. In summary: the case involves a point of law of general public importance and either (i) it concerns the interpretation of a statute; (ii) the court is bound by a previous decision of the Court of Appeal or Supreme Court; (iii) it is a matter of national importance; (iv) the result is so significant that a hearing before the Supreme Court is justified; or (v) the benefits of earlier consideration by the Supreme Court outweigh the benefits of consideration by the Court of Appeal. The applicant then applies to the Supreme Court for permission to appeal. In general, this will only be granted if permission would have been granted if the judgment had been that of the Court of Appeal and if it does not appear likely that further assistance would be gained from a judgment of the Court of Appeal.

f) There are no specific requirements other than those set out above.

g) The percentage of applications considered in the financial year 2017/18 that were given permission to appeal was 33%.

5. Not applicable.

6. If the Supreme Court hears an appeal it must raise an arguable point of law of general public importance. The Supreme Court's function is then to determine that point of law.

7.

a) No, there are no constitutional provisions with respect to having an appeal's instance.

b) Not applicable.

8. So far as we are aware, there is not currently any prominent political or academic discussion concerning any kind of reform with regard to access to the Supreme Court.

### **III. Implementation / Procedural Aspects**

1. Not applicable.

2.

a) Possible content of decisions of the Supreme Court:

- Quashing the decision of the lower court and remitting the case back to the lower court.
- Quashing the decision of the lower court and making the decision itself
- Quashing an administrative act.
- Obliging an administrative authority to do an administrative act
- Obliging an administrative authority to make a new discretionary decision
- Obliging an administrative authority to act in a certain way
- Issue an authoritative interpretation of the law, but only in a concrete case
- *Obiter dicta* – commentary on the interpretation of the law which is not part of the *ratio decidendi* of the individual case

b) The Supreme Court must defer to the first instance court in its determination of the facts, but it can disregard factual findings if they are plainly wrong.

3. Not applicable.

4. The Supreme Court rules of procedure cover both the procedure of applying for permission to appeal and the procedure for substantive hearings.

5. Permission to appeal applications are usually decided without an oral hearing. A small number of permission applications is dealt with orally, typically if they raise the possibility of a reference to the Court of Justice of the European Union or are exceptionally sensitive, such as in the recent assisted suicide appeal of *Conway*. Substantive appeals are always decided after oral hearings.

6.

Yes, decisions of the Supreme Court have an effect on all subsequent cases considering the same point of law.

a) Yes, lower courts are bound by law to follow decisions of the Supreme Court in other similar cases.

b) Lower courts cannot deviate from the *ratio decidendi* of a decision of the Supreme Court, unless they can distinguish it.

c) The Supreme Court will normally regard a previous decision of the Supreme Court (or its predecessor the House of Lords) as binding but will depart from it if it appears right to do so (bearing in mind the dangers of disturbing retrospectively that basis on which, for example fiscal arrangements have been made and the special need for certainty in the criminal law): see *Practice Statement (Judicial Precedent)* [1966] 1 WLR 1234.

d) See (c) above: cases raising the possibility of departure from a previous decision are normally heard by seven or more Justices (as opposed to the usual five).

7. Not applicable (there are no sections within the Supreme Court)